

UNITED STATES COURT OF APPEALS

**Filed 4/25/96**

TENTH CIRCUIT

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FALASHA MANSA MUSA AMEN-RA,

Petitioner-Appellant,  
vs.

HERBERT R. TILLERY, Colonel;  
STEVEN SPATARO, Lt. Col., Assistant  
Commandant; JEFFERY L. NEWTON,  
Major; WILLIAM PALMER, Major and  
JOHN E. MILLER, Lt. General, Post  
Commander,

Respondents-Appellees.

No. 95-3360  
(D.C. No. 95-CV-3157)  
(D. Kan.)

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ORDER AND JUDGMENT\*

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Before PORFILIO, McKAY, and KELLY, Circuit Judges.\*\*

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Mr. Amen-Ra appeals from the denial of his petition for a writ of mandamus seeking to compel the Commandant of the U.S. Disciplinary Barracks at Fort Leavenworth, Kansas, to remove an unfavorable Observation Report from his records.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

\*\* After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Mr. Amen-Ra disputed the substance of the report, and was told by prison authorities that his administrative due process was limited to notice of the report and an opportunity to submit matters in rebuttal. I R. doc. 2, attach. C. So that he could exonerate himself, he contends that the matter should have been handled through a trial by court-martial or an appearance before a Discipline or Adjustment Board, rather than as an Incident Observation Report for minor infractions. We disagree and note that Mr. Amen-Ra has been accorded all process due under the circumstances and whether to prefer more severe charges lies in the discretion of the military prison authorities, not the district court. See Schulke v. United States, 544 F.2d 453, 455 (10th Cir. 1976) (per curiam).

AFFIRMED. We GRANT Mr. Amen-Ra's Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees. The mandate shall issue forthwith.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge